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ARTICLE III, Smoking and Youth Access to Tobacco Products [Adopted 11-8-1994, as amended 1-5-1997; 6-11-1997; 6-12-2001; 12-08-08; 07/01/15]

In accordance with the authority granted by Massachusetts General Laws Chapter 111, Section 31, the Lexington Board of Health hereby adopts the following rules and regulations restricting the use, sale, vending and distribution of tobacco products within the Town of Lexington. This regulation is also promulgated pursuant to Massachusetts General Laws Chapter 270, Section 22(j) which states in part that “nothing in this section shall permit smoking in an area in which smoking is or may hereafter be prohibited by law including, without limitation: any other law or health regulation. Nothing in this section shall preempt further limitation of smoking by the commonwealth or political subdivision of the commonwealth.”

§ 155-14. Findings

- A. There exists conclusive evidence that tobacco smoke causes cancer, respiratory diseases, various cardiac diseases, negative birth outcomes, allergies and irritations to the eyes, nose and throat to both the smoker and nonsmokers exposed to secondhand smoke.
- B. Ongoing research attests to the health hazards of secondhand smoke. According to the federal government, 83% of worker health complaints related to indoor air quality are currently linked to smoking. Elimination of secondhand smoke will substantially prevent the amount of severe headaches, upper respiratory problems, cancer death and heart-related deaths.
- C. The use of so-called smokeless tobacco has been shown to cause gum disease, cancer and heart-related disease.
- D. Evidence further demonstrates that tobacco is extremely addictive. Nearly all first-use of tobacco occurs before high school graduation and more than 3000 young people begin smoking every day in the United States. Massachusetts’ youths are beginning smoking at very young ages. More than ninety percent of all Massachusetts smokers begin smoking before the age of twenty-one, and, nationally, in 2000, sixty-nine percent of middle school age children who smoked at least once a month were not asked to show proof of age when purchasing cigarettes according to the CDC. Due to the addictiveness of tobacco and the long-range health effects of tobacco use, ready access to cigarettes on the part of youth is a

concern. The U.S. Department of Health and Human Services (CDC) has concluded that nicotine is as addictive as cocaine or heroin.

- E. According to the CDC's youth risk behavior surveillance system's 2010 Summary, any non-cigarette tobacco and nicotine delivery product can be sold in a single "dose," enjoys a relatively low or no tax as compared to cigarettes, is often available in fruit, candy, and alcohol flavors, and is popular among youth.

Therefore it is the purpose and intention of the Board of Health to regulate the sale of tobacco products in order to protect the health of the youth, general public, and employees in the Town of Lexington.

§ 155-15. Definitions

As used in this regulation:

Blunt Wrap: Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.

Business Agent: Any individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

Compensation: Money, gratuity, privilege, or benefit received from an employer in return for work performed or services rendered.

Electronic Cigarette (e-cigarette): Any product or device that turns nicotine and chemicals into a vapor, aerosol or mist inhaled by the consumer. Such devices are often composed of a mouthpiece, heating element, and battery or electronic circuits that provide a vapor from liquid or solid nicotine or non-nicotine product to be inhaled by the user. This term shall include such devices manufactured as e-cigarettes, e-cigars, e-hookahs, e-pipes, or under any other product names.

Educational institution: Any public or private college, normal school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

Employee: An individual or person who performs a service for compensation for an employer at the employer's workplace, including a contract employee, temporary employee, and independent contractor who performs a service in the employer's workplace for more than a *de minimis* amount of time.

Employer: Any individual, person, partnership, association, corporation, trust, organization, school, college, university or other educational organization or other legal entity, whether public, quasi-public, private or non-profit, including the Town of Lexington or any agency thereof, which uses the services of one (1) or more employees at one (1) or more workplaces, at any one (1) time.

Enclosed: A space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by one (1) or more doors, including but not limited to an office, function room or hallway.

Food Service Establishment: A place where food is prepared and intended for individual portion service and includes the sites at which individual portions are provided. The term includes such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. The term includes, but is not limited to, delicatessens that offer prepared food in individual service portions, mobile food units, pushcarts and catering operations. The term does not include residential kitchens, retail food outlets, or supply vehicles.

Health Care Institution: An individual, partnership, association, corporation, trust, or any person or group of persons that provides health care services and employs health care providers,

licensed or subject to licensing, by the Massachusetts Department of Public Health; or a retail establishment that provides pharmaceutical goods and services and is subject to the provisions of 247 CMR 6.00. Health care institutions include, but are not limited to, hospitals, clinics, health centers, pharmacies, drug stores, and medical, doctor, and dental offices.

Indoor Sports Arena: Any sports pavilion, gymnasium, health spa, swimming pool, ice rink, or other similar place where members of the general public assemble to engage in physical exercise, participate in athletic competition or witness sports events.

Minimum Legal Sales Age: The age an individual must be before that individual can be sold tobacco products as defined herein.

Mobile Food Unit: A vehicle-mounted food establishment designed to be readily movable.

Municipal Vehicles: Vehicle(s) owned or leased by the Town of Lexington.

Nonsmoking Area: Any area that is designated and posted by the proprietor or person in charge as a place where smoking by patrons, employees or others is prohibited.

Outdoor Space: An outdoor area, open to the air at all times and not enclosed by a wall or side covering.

Permit Holder: Any person engaged in the sale or distribution of tobacco products directly to consumers who applies for and receives a Tobacco Product Sales Permit or any person who is required to apply for a Tobacco Product Sales Permit pursuant to these regulations, or his/her business agent.

Public Place: An enclosed, indoor area when open to and used by the general public, including but not limited to the following facilities: atriums; auditoriums; automatic teller machine lobbies; automobile repair and maintenance establishments; bars, lounges; common areas of apartment buildings containing four or more dwelling units, including stairwells, halls, entranceways, mailrooms, laundry facilities and storage areas; gasoline stations; licensed childcare locations, including childcare homes; educational facilities; elevators accessible to the public; clinics; health care providers; game arcades; hair cutting and cosmetology establishments; inns, hotel and motel lobbies, stairwells, halls, entranceways and public restrooms; free standing kiosks; laundromats; libraries; mobile food units; municipal buildings; museums; polling places; schools; school buses; service lines; retail stores; retail food outlets; indoor sports arenas; theaters; public transit facilities; and any clubs, rooms or halls when used for public meetings.

Restaurant: Any establishment serving food for consumption on the premises which maintains tables for the use of its customers. This includes cafeterias and cafeterias in the workplace.

Retail Food Outlet: Any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption. The term includes delicatessens that offer prepared food in bulk quantities only. The term does not include roadside markets that offer only fresh fruits and fresh vegetables for sale; food service establishments; bakeries; or food and beverage vending machines.

Retail Store: Any establishment selling goods, articles, or personal services to the public.

Self-Service Display: Any display from which customers may select a tobacco product without assistance from an employee or store personnel, excluding vending machines.

Service Line: Any indoor or outdoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

Smoking: The inhalation of the smoke, vapor, aerosol or mist of a pipe, cigar, cigarette, tobacco product, e-cigarette, combustible or non-combustible, by the consumer, regardless of product content.

Tobacco Product: Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, or electronic or e-cigarettes, electronic cigars,

electronic pipes, or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. A tobacco product includes any component, part, or accessory of a tobacco product. A tobacco product does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product and which is being marketed and sold solely for the approved purpose.

Vending Machine: Any automated or mechanical self-service device which, upon insertion of money or any other form of payment, dispenses or makes cigarettes or any other tobacco product.

Workplace: Workplace means an indoor area, structure or facility or a portion thereof, at which one (1) or more employees perform a service for compensation for the employer, other enclosed spaces rented to or otherwise used by the public and where the employer has the right or authority to exercise control over the space. The workplace shall include any space or room, under the control of a public or private employer which employees normally frequent during the course of employment including, but not limited to, work areas, offices, employee lounges and restrooms, conference rooms, and hallways and where the employer has the right or authority to exercise control over the space within fifteen (15) feet of any entranceway to an office building in zones CM, CRO and CD 1, 2, and 3 and within fifteen (15) feet of all Municipal buildings.

Terms not defined herein shall be defined as set forth in M.G.L., Ch. 270, Sec. 22 or 105 CMR 166. To the extent that any of the definitions herein conflict with M.G.L., Ch. 270, Sec. 22 and/or 105 CMR 166, the definition contained herein shall control to the extent permitted by law.

§ 155-16. Prohibition of Smoking in Public Places

No person shall smoke in any public place as defined in § 155-15, including, without limitation, the following:

§ 155-14. Findings.

- A. Restaurants. The prohibition on smoking in public places shall apply to all restaurants including all outdoor seating, take-out food establishments, and food service establishments.
- B. Public Transit Facilities. The prohibition on smoking in public places shall apply to buses, taxis, and other means of public mass transit while operating within the boundaries of the Town of Lexington, and indoor platforms for such facilities.
- C. Retail Food Outlets. The prohibition on smoking in public places shall apply to retail food outlets.
- D. Educational Institutions. It shall be unlawful for any person, including students and all teaching and non-teaching personnel, to smoke in any public or private educational institution, on its grounds or on school buses at any time.

The person(s) in charge of the educational institution shall conspicuously post a notice or sign at eye level and in unobstructed view at each entrance and in the gymnasium, auditorium, cafeteria, all restrooms and the principal's office indicating that smoking is prohibited therein, and use any reasonable means to enforce this regulation.

- E. Hotel/Motel/Inn Rooms Rented to Guests. Hotels, motels and inns shall provide non-smoking rooms as requested by guests. The rooms so designated will be posted as smoking prohibited rooms. Customers seeking accommodations will be routinely advised of the availability of non-smoking rooms by check-in personnel. Smoking rooms may be designated by the proprietor(s) or other person(s) in charge of a hotel/motel/inn

and may not exceed 25% of the total rooms licensed for guests. Non-smoking rooms may not be located between smoking rooms. Non-smoking room locations shall be so situated as to utilize physical barriers or ventilation systems to minimize involuntary exposure to tobacco smoke. Common restrooms, entranceways, hallways, stairways and lobbies, as well as places in which smoking is prohibited by the fire marshal or any applicable law or regulation, may not be designated as smoking areas.

- F. Implementation. The proprietor(s) or other person(s) in charge of a place covered by this regulation shall prevent smoking in non-smoking areas by:
 - 1. Conspicuously posting a notice or sign at each entrance to the public place indicating smoking is prohibited therein. In addition, conspicuously posting “No Smoking” signs, or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed by a red circle with a red bar across it) throughout public areas of the establishment.
 - 2. Using any other legal, appropriate and reasonable means to enforce these regulations.
- G. The use of tobacco products and electronic cigarettes is prohibited wherever smoking is prohibited per M.G.L., Ch. 270, Section 22, Town of Lexington bylaws, this regulation, or any other applicable law or regulation.

§ 155-17. Prohibition of Smoking at Town Recreation Areas

No person shall smoke in Town owned park and recreation areas, including but not limited to the following locations:

- A. Swimming Areas including The Old Reservoir and the Town Swimming Pool.
- B. Recreation Playgrounds and Tot Lots.
- C. Lexington School Playing Fields.
- D. Little League Fields, Soccer Fields, Basketball Courts.
- E. Conservation land where there are recreation facilities, including but not limited to Sutherland Park and Garfield Park.

§ 155-18. Workplace / Smoke Free Buffer Zone

It shall be unlawful for any person to smoke in any municipal workplace or municipal vehicle or the area within fifteen (15) feet of any municipal building entranceway, owned, operated or leased by the Town of Lexington, accessible to the public, except that this shall not apply to a smoker transiting through such fifteen (15) foot area nor to a smoker approaching an entranceway with the intention of extinguishing a tobacco product. Any town of Lexington employee violating the municipal building or municipal building buffer zone smoking prohibition shall be reported to that employee’s supervisor and then to the Human Resources Department who will address the violation in accordance with the Lexington employee’s collective bargaining agreement and take the appropriate further action.

Each person having control of premises in which smoking is prohibited by this regulation, or his/her agent or designee, shall conspicuously display upon the premises an appropriate number of signs reading “*Smoking Prohibited by Law.*”

It shall be unlawful for any person having control of any premises upon which smoking is prohibited by this regulation to knowingly permit, or for his or her agent to knowingly permit, a violation of this regulation.

§ 155-19. Enforcement

- A. An owner, manager, or other person in control of a building, vehicle or vessel who violates subsections 155-16 to 155-18, in a manner other than by smoking in a place where smoking is prohibited or by failing to post signage required by law, shall be punished by a fine of: one hundred dollars (\$100) for the first violation, two hundred dollars (\$200) for the second violation within three (3) calendar years and three hundred dollars (\$300) for a third or subsequent violation within three (3) calendar years. Violation of § 155-18 may also be punishable by suspension of any license or permit issued by the Town of Lexington for any such public place for a period of up to two (2) days for each day of non-compliance.
- B. In addition to the remedies provided by the above fine schedule, the Board of Health or any person aggrieved by the failure of the proprietor or other person in charge of a public place or workplace to comply with any provision of this subsection may apply for injunctive relief to enforce the provisions of this subsection in any court of competent jurisdiction.
- C. Any person aggrieved by the failure or refusal to comply with restrictions in any municipal building may complain in writing to the head of the department or agency occupying the area where the violation takes place. Said agency or department head shall respond in writing within fifteen (15) days to the complainant that he has inspected the area described in the complaint and has enforced the provisions of this section as provided herein.
- D. The Lexington Board of Health shall provide notice of the intent to suspend a permit due to violation of any provision of this Chapter 155, which notice shall contain the reasons therefore and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The proprietor, permit holder or business agent shall have the opportunity to be heard at such a hearing and shall be notified of the Board of Health's decision, and the reasons therefore in writing. After a hearing, the Lexington Board of Health shall suspend the Tobacco Product Sales Permit if the Board finds that that a violation of this Chapter 155 has occurred. For purposes of suspensions, the Board shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense. All tobacco products shall be removed from the retail establishment upon suspension of the Tobacco Product Sales Permit. Failure to remove all tobacco products shall constitute a separate violation of this regulation.

§ 155-20. Other Applicable Laws

These regulations shall not be interpreted or construed to permit smoking or the sale of tobacco products where such sale, use of tobacco products or smoking is otherwise restricted by other applicable health, safety or fire codes, laws, bylaws or regulations.

§ 155-21. Tobacco Product Sales to Persons under the Minimum Legal Sales Age Prohibited

- A. No person shall sell tobacco products or permit tobacco products as defined herein to be sold to a person under the minimum legal sales age or, not being a parent or legal guardian, give, exchange, barter, trade, or otherwise distribute and/or furnish tobacco products as defined herein to a person under the minimum legal sales age. As of July 1, 2015, the minimum legal sales age in Lexington is twenty-one (21).
- B. Each retailer shall verify by means of a government issued photographic identification

containing bearer's date of birth that a person purchasing the product is of the minimum legal sales age. All retail sales of tobacco must be face-to-face between the seller and the buyer and occur at the permitted location. Anyone who sells tobacco products to a person under the minimum legal sales age and the store owner or manager and staff known to be in the immediate area of the sale at the time of the sale, shall attend a training session on tobacco product sales. In accordance with Massachusetts General Laws Chapter 270, Section 6, and Chapter 1, § 6 of the Code of the Town of Lexington, whoever sells tobacco products to a person under the minimum legal sales age, shall be punished by a fine of one hundred dollars (\$100.00) for the first offense, two hundred dollars (\$200.00) for the second offense, and three hundred (\$300.00) for any third or subsequent offense within three (3) calendar years.

- C. If a tobacco product retailer fails to attend training or fails to pay a fine as required by § 155-21 (A) The Board of Health shall hold a hearing, in accordance with the notice procedures in § 155-19 (D) to determine if the following penalties will be imposed:
1. Prohibit a retail establishment from selling tobacco products by suspending its Tobacco Product Sales Permit for a period of three (3) business days for the first offense, five (5) business days for the second offense, and ten (10) business days for the third offense;
 2. If a tobacco product retailer sells tobacco products to persons under the minimum legal sales age on three (3) or more occasions within three (3) calendar years, the Board of Health shall hold a hearing, in accordance with the notice procedures in § 155-19(D) to determine if the following penalties will be imposed:
 - a. For selling tobacco products to persons under the minimum legal sales age on more than three (3) occasions within three (3) calendar years, prohibit a retail establishment from selling tobacco products for a period of six (6) months by suspending its Tobacco Product Sales Permit and/or denying the renewal or issuance of a Tobacco Product Sales Permit.
 - b. For selling tobacco products to persons under the minimum legal sales age on five (5) or more occasions within three calendar years, prohibit a retail establishment from selling tobacco products for a period of twelve (12) months by suspending its Tobacco Product Sales Permit and/or denying the renewal or issuance of a Tobacco Product Sales Permit.
- D. The Board of Health or its enforcement officers, including but not limited to the Lexington Police Department, shall enforce all provisions of Sections 155-14-155-24.

155-22. Other Restrictions on the Sale and Distribution of Tobacco Products

- A. Signage: In addition to the posting required pursuant to Massachusetts General Laws, Chapter 270, § 7, the owner or other person in charge of a retail store or other place used to sell tobacco products shall conspicuously post a sign stating "*The sale of e-cigarettes or tobacco products to persons under the age of 21 is prohibited in the Town of Lexington.*" The owner or other person in charge of a retail store or other place used to sell electronic cigarettes at retail shall conspicuously post a sign stating, "*The use of e-cigarettes at indoor establishments may be prohibited by local law.*" The notices required by this paragraph shall be posted conspicuously in the retail store or other place in such a manner so that a person standing at or approaching the cash register may see them readily. These notices shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor. Whoever fails to post a sign as required by this Section 155-22(A) shall be punished by a fine of no more than \$50 per violation. Whoever unlawfully removes a sign required by this section 155-22(A) shall be punished by a fine of no more than \$10

- per violation.
- B. Self-Service Displays: Self-service displays of tobacco products are prohibited. Tobacco products must be located on, over, or behind the checkout counter and must only be obtained by the sales clerk.
 - C. Mobile Food Trucks: Tobacco product sales or distribution from mobile food units or trucks is prohibited.
 - D. Sales Personnel: No person or entity selling tobacco products shall allow anyone to sell cigarettes and other tobacco products until such employee reads the Board of Health regulations and state laws regarding the sale of tobacco products and signs a sworn statement, a copy of which will be placed on file in the office of the Board of Health, that he or she has read and will uphold the regulations.
 - E. Free Distribution/Sampling: No person shall distribute, or cause to be distributed, any free samples of tobacco products as defined herein. No means, instruments or devices that allow for the redemption of all tobacco products or nicotine delivery products for free or cigarettes at a price below the minimum retail price determined by the Massachusetts Department of Revenue shall be accepted by any permit holder.
 - F. Vending Machines: No person shall install or maintain a vending machine to distribute or sell tobacco products within the Town of Lexington.
 - G. Packaging: Sale or distribution of tobacco products in any form other than an original factory-wrapped package is prohibited. No person or entity may sell or cause to be sold, distribute, or cause to be distributed, any cigarette package that contains fewer than twenty (20) cigarettes. The sale of single cigarettes is prohibited.
 - H. Blunt Wraps: No person or entity shall sell or distribute blunt wraps in the Town of Lexington.
 - I. Penalties: Any person or entity who fails to comply with any of the requirements found in subsections §155-22(B)-(H) shall be punished by a fine of one hundred dollars (\$100.00) per day of violation. Enforcement shall be by the Board of Health or its designees.

§ 155-23. Permits

- A. Tobacco Product Sales Permit:
 - 1. No person shall sell or otherwise distribute tobacco products at retail within the Town of Lexington without first obtaining a Tobacco Product Sales Permit issued annually by the Town of Lexington Board of Health.
 - 2. Only owners of establishments with a permanent, non-mobile location in the Town of Lexington are eligible to apply for a permit and sell tobacco products at that location which is specified in the permit application.
 - 3. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Town of Lexington Board of Health regulation.
 - 4. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco product sales regarding both state laws regarding the sale of tobacco products and this regulation.
 - 5. Each applicant is required to provide proof of a current tobacco license issued by the Massachusetts Department of Revenue, or other applicable state agency, before a Tobacco Product Sales Permit can be issued.
 - 6. The fee for a Tobacco Product Sales Permit shall be determined by the fee schedule. All Tobacco Product Sales Permits shall be renewed annually by the last day in January.
 - 7. A separate permit is required for each retail establishment selling tobacco products.

8. Each Tobacco Product Sales Permit shall be displayed at the retail establishment in a conspicuous place.
 9. A Tobacco Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco products must apply for a new Tobacco Product Sales Permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.
 10. Issuance of a Tobacco Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.
 11. A Tobacco Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal fines has expired and/or has not satisfied any outstanding permit suspensions.
- B. Penalties: Any person, firm, corporation, establishment or agency selling tobacco products at retail without a valid Tobacco Product Sales Permit shall be punished by a fine of one hundred dollars (\$100.00). If the violation is not corrected within three (3) days of notification, the fine shall be one hundred dollars (\$100.00) for each day the violation continues.

§ 155-24. Severability

If any provision of these regulations is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

Effective Date

Regulations approved and adopted 11/8/94

Published 12/24/94

Effective 2/15/95

Amendments effective 1/5/97

Amendments effective 6/11/97

Amendments effective on 6/12/01

Amendments effective on 12/08/08

Amendments effective on 07/01/15